

STANDARD

**U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 2:18-cv-00182-JDL**

AMERICAN CIVIL LIBERTIES UNION OF MAINE
FOUNDATION et al v. US DEPARTMENT OF HOMELAND
SECURITY et al

Assigned to: JUDGE JON D. LEVY

Referred to: MAGISTRATE JUDGE JOHN H. RICH III

related Case: 2:18-cv-00176-JDL

Cause: 05:552 Freedom of Information Act

Date Filed: 05/08/2018

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

Plaintiff

**AMERICAN CIVIL LIBERTIES
UNION OF MAINE FOUNDATION**

represented by **EMMA EATON BOND**
AMERICAN CIVIL LIBERTIES UNION
OF MAINE
121 MIDDLE STREET
SUITE 200
PORTLAND, ME 04101
207-619-8687
Email: ebond@aclumaine.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GILLES BISSONNETTE
AMERICAN CIVIL LIBERTIES UNION
OF NEW HAMPSHIRE
18 LOW AVENUE
CONCORD, NH 03301
603-224-5591
Email: gilles@aclu-nh.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LIA ERNST
AMERICAN CIVIL LIBERTIES UNION
OF VERMONT
P.O. BOX 277
MONTPELIER, VT 05601
802-223-6034
Email: lernst@acluvt.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ZACHARY L. HEIDEN
AMERICAN CIVIL LIBERTIES UNION
OF MAINE
121 MIDDLE STREET
SUITE 200
PORTLAND, ME 04101
207-774-5444
Fax: 207-774-1103
Email: zheiden@aclumaine.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

**AMERICAN CIVIL LIBERTIES
UNION OF NEW HAMPSHIRE
FOUNDATION**

represented by **EMMA EATON BOND**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GILLES BISSONNETTE
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LIA ERNST
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ZACHARY L. HEIDEN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

**AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
VERMONT**

represented by **EMMA EATON BOND**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

GILLES BISSONNETTE
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LIA ERNST
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ZACHARY L. HEIDEN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

**US DEPARTMENT OF HOMELAND
SECURITY**

represented by **JAMES D. CONCANNON**
U.S. ATTORNEY'S OFFICE
DISTRICT OF MAINE
100 MIDDLE STREET PLAZA
PORTLAND, ME 04101
207-780-3257
Email: james.concannon@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ANDREW K. LIZOTTE
U.S. ATTORNEY'S OFFICE
DISTRICT OF MAINE
100 MIDDLE STREET PLAZA
PORTLAND, ME 04101
(207) 771-3246
Fax: (207) 780-3304
Email: andrew.lizotte@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

represented by

**US CUSTOMS AND BORDER
PROTECTION**

JAMES D. CONCANNON
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ANDREW K. LIZOTTE
(See above for address)
ATTORNEY TO BE NOTICED

Defendant**US IMMIGRATION AND CUSTOMS
ENFORCEMENT**

represented by **JAMES D. CONCANNON**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ANDREW K. LIZOTTE
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/08/2018	<u>1</u>	COMPLAINT against US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY PAYMENT OF FILING FEE DUE WITHIN 48 HOURS. IF FILING FEE IS BEING PAID WITH A CREDIT CARD COUNSEL ARE INSTRUCTED TO LOGIN TO CMECF AND DOCKET Case Opening Filing Fee Paid FOUND IN THE Complaints and Other Initiating Documents CATEGORY. CHECK PAYMENTS DUE WITHIN 48 HOURS. , filed by AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT. (Service of Process Deadline 8/6/2018) Fee due by 5/10/2018. (Attachments: # <u>1</u> Exhibit A 9/5/17 DHS FOIA request, # <u>2</u> Exhibit B acknowledgement, coditional grant, fee waiver, # <u>3</u> Exhibit C ICE FOIA request, # <u>4</u> Exhibit D 9/27/17 DHS release in full letter, # <u>5</u> Exhibit D1 9/27/17 DHS record production, # <u>6</u> Exhibit E 2/1/18 FOIA appeal, # <u>7</u> Exhibit F Acknowledgement, standard letter1)(bfa) (Entered: 05/08/2018)
05/08/2018	<u>2</u>	CIVIL COVER SHEET. (bfa) (Entered: 05/08/2018)
05/08/2018		Filing Fee Paid via Credit Card (Filing fee \$ 400 receipt number 0100-1837870.), filed by AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT.(BOND, EMMA) (Entered: 05/08/2018)
05/08/2018	<u>3</u>	CERTIFICATION for Admission Pro Hac Vice of Gilles Bissonnette filed by EMMA EATON BOND on behalf of AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT, AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION (Total admission fee \$ 100 receipt number 0100-1837874.) (BOND, EMMA) (Entered: 05/08/2018)
05/08/2018	<u>4</u>	CERTIFICATION for Admission Pro Hac Vice of Lia Ernst filed by EMMA EATON BOND on behalf of AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT, AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION (Total admission fee \$ 100 receipt number 0100-1837882.) (BOND, EMMA) (Entered: 05/08/2018)
05/09/2018		Set Deadlines : Attorney Lia Ernst, Gilles Bissonnette shall register for the District of Maine's Electronic Case Filing (ECF) System by 5/16/2018. Registration Forms are available on the Court's website http://www.med.uscourts.gov/ecf-registration under the Electronic Case Files, ECF Registration Section. (bfa) (Entered: 05/09/2018)
05/15/2018	<u>5</u>	NOTICE of Appearance by JAMES D. CONCANNON on behalf of US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND

		BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY (CONCANNON, JAMES) (Entered: 05/15/2018)
05/16/2018	<u>6</u>	NOTICE of Appearance by ANDREW K. LIZOTTE on behalf of All Defendants (LIZOTTE, ANDREW) (Entered: 05/16/2018)
05/16/2018	<u>7</u>	<p>Summons Issued as to US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY.</p> <p>Counsel shall print the embossed summons and effect service in the manner in accordance with Fed.R.Civ.P.4.</p> <p>Note–If you are using Version 6 of Adobe Acrobat, be sure the PRINT WHAT field is set to DOCUMENTS AND COMMENTS (Click File, then Print to check this setting).</p> <p>(Attachments: # <u>1</u> Summons – CBP, # <u>2</u> Summons – ICE)(akr) (Entered: 05/16/2018)</p>
05/21/2018	<u>8</u>	AFFIDAVIT of Service by AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT. All Defendants. (Attachments: # <u>1</u> Exhibit Return Receipt – Certified Mail)(BOND, EMMA) (Entered: 05/21/2018)
05/22/2018		Set Answer Deadline for US DEPARTMENT OF HOMELAND SECURITY, US CUSTOMS AND BORDER PROTECTION, and US IMMIGRATION AND CUSTOMS ENFORCEMENT : Answer due by 7/17/2018. (akr) (Entered: 05/22/2018)
05/22/2018		Reset Answer Deadline for US DEPARTMENT OF HOMELAND SECURITY, US CUSTOMS AND BORDER PROTECTION, and US IMMIGRATION AND CUSTOMS ENFORCEMENT : Answer due by 6/18/2018 pursuant to 5 U.S.C. § 552(a)(4)(C). (akr) (Entered: 05/22/2018)
06/18/2018	<u>9</u>	ANSWER to <u>1</u> Complaint,,, by US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY.(CONCANNON, JAMES) (Entered: 06/18/2018)
06/19/2018	<u>10</u>	SCHEDULING ORDER: Discovery due by 11/5/2018. Written Notice of Intent to File Summary Judgment Motion and Request for Pre–Filing Conference due by 11/13/2018. Motions due by 11/26/2018. Ready for Trial on 2/4/2019. By MAGISTRATE JUDGE JOHN H. RICH III. (mjlt) (Entered: 06/19/2018)
07/03/2018	<u>11</u>	Joint MOTION to Amend Scheduling Order <i>and Joint Report of 26(f) Conference</i> by US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY Responses due by 7/24/2018. (CONCANNON, JAMES) (Entered: 07/03/2018)
07/05/2018	<u>12</u>	ORDER granting without objection <u>11</u> Motion to Amend Scheduling Order. Without objection, the parties are directed to file a written joint status report by August 17, 2018, addressing the status of defendants' search for and production of records responsive to the FOIA request at issue herein, the status of any negotiation on the scope and timing of future productions, and the parties' proposed schedule for future proceedings herein. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 07/05/2018)
07/05/2018		Set Deadlines Pursuant to Order #12 entered on July 5, 2018: Status Report due by 8/17/2018–the parties are directed to file a written joint status report addressing the status of defendants' search for and production of records responsive to the FOIA request at issue herein, the status of any negotiation on the scope and timing of future productions, and the parties' proposed schedule for future proceedings herein. (mtm) (Entered: 07/06/2018)
08/17/2018	<u>13</u>	STATUS REPORT Submitted by Joint Agreement by US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US

		DEPARTMENT OF HOMELAND SECURITY. (CONCANNON, JAMES) (Entered: 08/17/2018)
08/17/2018	14	MOTION for Permission to File Second Joint Status Report (No PDF attached. See ECF #13) by US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY (akr) (Entered: 08/17/2018)
08/19/2018	15	ORDER granting without objection 14 Joint Motion for leave to file second joint status report. The parties shall file their second Joint Status Report, as requested, by October 12, 2018. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 08/19/2018)
08/19/2018		Set Deadlines : Status Report due by 10/12/2018. (akr) (Entered: 08/20/2018)
10/12/2018	<u>16</u>	STATUS REPORT <i>and Joint Motion for Permission to File Third Joint Status Report</i> by US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY. (CONCANNON, JAMES) (Entered: 10/12/2018)
10/12/2018	17	MOTION for Permission to File Third Joint Status Report (No PDF attached. See ECF #16) by US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY (akr) (Entered: 10/15/2018)
10/15/2018	18	ORDER granting without objection 17 Joint Motion for Leave to File Third Joint Status Report. The parties shall file their third Joint Status Report by November 16, 2018, addressing the parties' agreed-upon production schedule or, if the parties are unable to agree on a production schedule, each parties' position regarding a proposed production schedule. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 10/15/2018)
10/15/2018		Set Deadlines : Status Report due by 11/16/2018. (akr) (Entered: 10/15/2018)
10/16/2018		Set Deadlines : Per Local Rule 7.1 Notice of Interested Parties or Corporate Disclosure Statement due by 10/22/2018 as to AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION. (akr) (Entered: 10/16/2018)
10/22/2018	<u>19</u>	NOTICE of Interested Parties by AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT, AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION (BOND, EMMA) (Entered: 10/22/2018)
11/16/2018	<u>20</u>	STATUS REPORT (<i>Joint</i>) <i>and Motion for the Court to Set Production Schedule</i> by AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT, AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION. (BOND, EMMA) (Entered: 11/16/2018)
11/16/2018	21	Joint MOTION for the Court to Set Production Schedule (No PDF attached – See ECF #20) by AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT, AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION, AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION (akr) (Entered: 11/19/2018)
11/25/2018	22	ORDER granting 21 Joint Motion for the court to set production schedule. Upon careful consideration of the parties' Third Joint Status Report, the court sets the following production schedule for the release of records in the Defendants' possession: (1) without objection, by December 10, 2018, Defendants ICE and CBP will make a production of responsive, non-exempt records; by January 10, 2019, Defendants ICE and CBP will make an additional production of responsive, non-exempt records; and, by February 11, 2019 (February 10 being a Sunday), Defendants ICE and CBP will, respectively, complete processing the entirety of the priority search documents and produce to the Plaintiffs any responsive, non-exempt records identified pursuant to the priority search parameters; (2) regarding Defendant DHS, over objection and weighing the parties' competing interests set out in detail in the Third Joint Status Report, including Plaintiffs' contention that DHS should be subject to the same schedule as ICE and CBP and DHS's contention that it is only able to commit to reviewing 250

		pages of records per month beginning in January, I ORDER Defendant DHS to produce, beginning in January 2019, the 1,735 potentially responsive pages to the Plaintiffs at an average rate of 350 pages and a minimum rate of 250 pages per month, as follows: By January 10, 2019, Defendant DHS will make a production of at least 250 responsive, non-exempt records; by February 11, 2019, Defendant DHS will make an additional production of at least 250 responsive, non-exempt records; by March 11, 2019, Defendant DHS will make an additional production of at least 250 responsive, non-exempt records; by April 10, 2019, Defendant DHS will make an additional production of at least 250 responsive, non-exempt records; and by May 10, 2019, Defendant DHS will complete processing the entirety of the priority search documents and produce to the Plaintiffs any responsive, non-exempt records identified pursuant to the priority search parameters. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 11/25/2018)
01/09/2019	<u>23</u>	Consent MOTION to Amend <i>Production Schedule</i> by US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY Responses due by 1/30/2019. (CONCANNON, JAMES) (Entered: 01/09/2019)
01/14/2019	24	ORDER granting without objection <u>23</u> Motion to Amend scheduling order. The court's November 25, 2018, production schedule, ECF No. 22, is amended to postpone defendants' January 10, 2019, production of responsive, non-exempt records until the next scheduled production date of February 11, 2019. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 01/14/2019)
02/11/2019	<u>25</u>	Consent MOTION to Amend <i>Production Schedule</i> by US IMMIGRATION AND CUSTOMS ENFORCEMENT, US CUSTOMS AND BORDER PROTECTION, US DEPARTMENT OF HOMELAND SECURITY Responses due by 3/4/2019. (CONCANNON, JAMES) (Entered: 02/11/2019)
02/15/2019	26	ORDER granting without objection <u>25</u> Motion to Amend Production Schedule. The court's November 25, 2018, production schedule, ECF No. 22, as amended, ECF No. 24, is further amended to postpone defendants' February 11, 2019, production of responsive, non-exempt records until February 15, 2019. By MAGISTRATE JUDGE JOHN H. RICH III. (RICH III, JOHN) (Entered: 02/15/2019)
05/15/2019	27	NOTICE of Hearing: Telephone Conference re Scheduling Order Deadlines set for 5/20/2019 at 01:00 PM before MAGISTRATE JUDGE JOHN H. RICH III. Counsel shall call chambers at the number provided once all parties are on the line.(slg) (Entered: 05/15/2019)